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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/451,153	11/30/1999	JAMES WICHELMAN	10001183	8685
22878	7590	06/25/2004		
AGILENT TECHNOLOGIES, INC. INTELLECTUAL PROPERTY ADMINISTRATION, LEGAL DEPT. P.O. BOX 7599 M/S DL429 LOVELAND, CO 80537-0599				
			EXAMINER RAYMOND, EDWARD	
			ART UNIT 2857	PAPER NUMBER
DATE MAILED: 06/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/451,153

Applicant(s)

WICHELMAN ET AL.

Examiner

Edward Raymond

Art Unit

2857

AW

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2001.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-8, 10, 13, 15-18, 20-22, 24, 27 and 29 is/are rejected.
7) ☒ Claim(s) 9, 11, 12, 14, 19, 23, 25, 26 and 28 is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 30 November 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. **Claims 1-8, 10, 13, 15-18, 20-22, 24, 27, and 29** are rejected under 35 U.S.C. 102(e) as being anticipated by Burns et al. Burns et al. teach a system, comprising a plurality of nodes communicating signals pursuant to a single channel plan (Claims 1, 15, 16, and 29: see col. 6, lines 39-56: The Examiner notes that since a cable modem uses the cable television network, it inherently uses a single channel plan), said channel plan having predefined characteristics for each of a plurality of signal channels (Claims 1, 15, 16, and 29: see col. 4, lines 21-36); a spectrum analyzer (Claims 1, 15, 16, and 29: see col. 4, lines 37-41); a switch capable of connecting one of said nodes with said spectrum analyzer (Claims 1, 15, 16, and 29: see col. 9, lines 5-8); and a controller controlling said switch to select said one node (Claims 1, 15, 16, and 29: see col. 7, lines 27-31), said controller capable of testing communication of signals on at least one of said nodes by conducting a test plan (Claims 1, 15, 16, and 29: see col. 6, lines 39-42), said test plan being designed based upon said channel plan, said

test plan prescribing measurement of at least one signal parameter (Claims 1, 15, 16, and 29: see col. 10, lines 35-46).

Burns et al. teach a system wherein the nodes are part of a television cable network (Claim 2: see col. 6, lines 39-42).

Burns et al. teach a system wherein said test plan prescribes comparison of a signal associated with at least one channel with at least one predefined signal threshold (Claims 3, 13, 17, and 27: see col. 5, lines 11-18).

Burns et al. teach a system wherein said test plan includes comparing a signal parameter with an alarm limit and further comprising the step of communicating an alarm to a graphical user interface when said critical alarm limit is exceeded (Claims 4 and 18: see col. 4, lines 10-21 and also Figure 3: Computer 380).

Burns et al. teach a system wherein said test plan prescribes performing a spectrum scan (Claims 6 and 20: see col. 9, lines 5-8: The Examiner notes that the spectrum analyzer performs a spectrum scan).

Burns et al. teach a system further comprising a graphical user interface and wherein said controller is configured to communicate a result of said test plan to said graphical user interface for displaying said result on a screen (Claims 7 and 21: see Figure 3: Computer 380).

Burns et al. teach a system wherein said controller is configured to perform said testing step periodically over time and to store test results over time (Claims 8 and 22: see col. 8, lines 60-64).

Burns et al. teach a system wherein said channel plan comprises a center frequency and power level (Claims 10 and 24: see Figure 7).

Allowable Subject Matter

3. **Claims 9, 11, 12, 14, 19, 23, 25, 26, and 28** objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Chamberlain et al. teach monitoring system and method implementing automatic testing with a smart scanning algorithm.

Contact Information

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward Raymond whose telephone number is 571-272-2221. The examiner can normally be reached on Monday through alternating Friday between 8:00 AM and 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marc Hoff can be reached on 571-272-2216. The fax phone numbers for the organization where this application or proceeding is assigned are 571-273-2221 for regular communications and 571-272-1562 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1782.

A handwritten signature in black ink, appearing to read "Edward Raymond". The signature is written in a cursive, flowing style with a large initial "E" and "R".

June 24, 2004
Edward Raymond
Patent Examiner
Art Unit 2857